

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

JESSICA ANNE MARIE FOUST,

Case No. 2:23-cv-00168-MK

Plaintiff,

ORDER

v.

FAUST, C/O OSCI; FREEMAN, C/O OSCI;
HIGHBERGER, SUPERINTENDENT OF
OSCI; COLETTE PETERS, Director of
ODOC,

Defendants.

KASUBHAI, Magistrate Judge.

Plaintiff, an adult in custody with the Oregon Department of Corrections, filed suit pursuant to 42 U.S.C. § 1983 and alleged violations of the Eighth Amendment. The Complaint was referred to Judge Aiken for review, and plaintiff's claims against defendants Highberger and Peters have been dismissed. Accordingly, the Clerk of Court is directed to send waiver of service packets for defendants Faust and Freeman to Assistant Attorney General Nathan Riemersma. If

defendants decline to waive service, plaintiff will be notified and provided the necessary forms for service by the United States Marshals Service.

Plaintiff also moved for the appointment of counsel. Generally, there is no constitutional right to counsel in a § 1983 case. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Pursuant to 28 U.S.C. § 1915(e)(1), this Court has discretion to request volunteer counsel for indigent plaintiffs in exceptional cases. *Id.*; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). To determine whether exceptional circumstances exist, the court evaluates the plaintiff's likelihood of success on the merits and the plaintiff's ability to articulate the claim in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970; *Wilborn*, 789 F.2d at 1331.

After review of plaintiff's allegations and the relevant legal issues, plaintiff has not demonstrated this is an exceptional case warranting the appointment of volunteer counsel at this time.

CONCLUSION

Plaintiff's Motion for Appointment of Counsel is DENIED (ECF No. 3) with leave to renew at a later stage of the proceedings.

The Clerk of the Court is directed to send copies of this Order, Judge Aiken's Order, and waiver of service packets to Assistant Attorney General Nathan Riemersma.

IT IS SO ORDERED.

DATED this 17th day of March 2023.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge